



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 14-27
No-Action
March 10, 2014
Division of Clearing and Risk

Mr. Thomas Book, Chief Executive Officer
Mr. Oliver Haderup, Executive Director
Eurex Clearing AG
Mergenthalerallee 61
65760 Eschborn, Germany

Re: Extension of Time-Limited No-Action Relief with Regard to Sections 5b(a) and 2(h)(1)(A) of the Commodity Exchange Act and Implementing Regulations Thereunder

Dear Mr. Book and Mr. Haderup:

This is in response to your letter dated December 17, 2013 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) requesting an extension of the no-action relief that the Division granted to Eurex Clearing AG (“Eurex Clearing”) in CFTC Letter 13-44 and that expired on December 31, 2013 (the “No-Action Relief”).¹ In CFTC Letter 13-44, the Division stated it would not recommend that the Commission take enforcement action against (1) Eurex Clearing for failure to register as a derivatives clearing organization (“DCO”) pursuant to the requirements of Section 5b(a) of the Commodity Exchange Act (“CEA”),² or (2) clearing members of Eurex Clearing that are U.S. persons (each, a “U.S. Clearing Member”) for failure to clear certain interest rate swaps (“IRS”) or certain credit default swaps (“CDS”) on a broad-based index of reference entities (“Index CDS”)³ through a registered or exempt DCO pursuant to the requirements of Section 2(h)(1)(A) of the CEA and the implementing

¹ CFTC Letter No. 13-44 (July 11, 2013) and its attachment, available at: <http://www.cftc.gov/ucm/groups/public/@lrlattergeneral/documents/letter/13-44.pdf> and <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/eurexattachment.pdf>, respectively.

² 7 U.S.C. 7a-1(a).

³ See *supra* note 1 for the attachment containing a list of the IRS and Index CDS contracts currently accepted for clearing by Eurex Clearing.

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regulations thereunder as applicable.⁴ You have requested that the No-Action Relief be extended until the earlier of December 31, 2014, or the date upon which the Commission determines to grant or deny the pending application of Eurex Clearing for registration as a DCO with respect to its IRS and Index CDS clearing businesses.

Eurex Clearing filed an initial application for DCO registration on May 17, 2011 and amended applications on September 14, 2012 and September 21, 2012. Subsequently, Eurex Clearing submitted additional materials, which further support its application, most recently on January 31, 2014. The review period for consideration of the application has been extended to December 31, 2014.⁵

Eurex Clearing requests the extension of the No-Action Relief in order to maintain the status quo during the pendency of its application for registration. In addition, Eurex Clearing further states that such extension of the No-Action Relief is an appropriate means of promoting competition and enhancing choice in clearing services and is in the public interest.

In view of the foregoing, the Division has decided to extend the No-Action Relief, subject to the conditions described below, until the earlier of the date on which Eurex Clearing becomes registered as a DCO with respect to its IRS and Index CDS clearing businesses or December 31, 2014.

Extension of Grant of No-Action Relief

Based on the facts presented and the representations you have made,⁶ the Division will not recommend that the Commission take enforcement action against (i) Eurex Clearing for failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA, or (ii) U.S. Clearing Members for failure to clear IRS or Index CDS through a registered or exempt DCO, pursuant to the requirements of Section 2(h)(1)(A) of the CEA and the implementing regulations thereunder as applicable, subject to the following conditions:

- (1) Product Scope. This relief is limited to IRS and Index CDS currently accepted for clearing by Eurex Clearing and identified in the attachment to this letter;

⁴ 7 U.S.C. 2(h)(1)(A); 17 C.F.R. pt 50.

⁵ By letter dated December 17, 2013, Eurex Clearing requested that the review period for its DCO application be extended until December 31, 2014.

⁶ By letter dated February 25, 2014, Eurex Clearing represented that additional IRS products were added to the list of products offered for clearing after the issuance of CFTC Letter 13-44. An updated list of IRS products cleared by Eurex Clearing is in the attachment to this letter and is marked to show changes from the attachment included with CFTC Letter 13-44.

- (2) Participant Scope. The relief applies to Eurex Clearing and to its prospective U.S. Clearing Members in connection with their proprietary⁷ IRS and Index CDS clearing businesses (Eurex Clearing will not accept, and no Eurex clearing member will offer for clearing through Eurex Clearing, IRS or Index CDS on behalf of a U.S. customer⁸);
- (3) Limited Duration. The no-action relief shall be effective retroactively beginning on January 1, 2014 and shall expire at the earlier of: (i) December 31, 2014, or (ii) the date upon which Eurex Clearing becomes registered as a DCO with respect to its IRS and Index CDS clearing businesses;⁹ and
- (4) Reporting. Beginning June 1, 2014, if a U.S. Clearing Member clears through Eurex Clearing a swap (referred to as the “alpha swap”) that has been reported to a Commission-registered swap data repository (“SDR”) pursuant to Part 45 of the Commission’s regulations,¹⁰ then Eurex Clearing must report to an SDR, pursuant to Part 45, data regarding the two swaps resulting from the novation of the alpha swap that had been submitted to Eurex Clearing for clearing (referred to as “beta” and “gamma” swaps).¹¹

⁷ The term “proprietary account” is defined in § 1.3(y) of the Commission’s regulations, 17 C.F.R. § 1.3(y). The relief granted herein to U.S. Clearing Members includes transactions of a parent or affiliate of a U.S. Clearing Member.

⁸ The scope of the relief provided herein does not extend to customer clearing by U.S. Clearing Members or U.S. customer clearing by any clearing member of Eurex Clearing. The term “customer” is defined in § 1.3(k) of the Commission’s regulations, 17 C.F.R. § 1.3(k). *See* Adaptation of Regulations to Incorporate Swaps, 77 Fed. Reg. 66,288, 66,316 (Nov. 2, 2012).

⁹ Should the Commission deny Eurex Clearing’s application for DCO registration, the Division will provide Eurex Clearing and its U.S. Clearing Members with guidance and, as appropriate, no-action relief to facilitate the orderly disposition of open positions.

¹⁰ *See* Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012) (adopting Part 45).

¹¹ Pursuant to Commission Regulation 39.12(b)(6), during the clearing process, a swap submitted for clearing to a DCO (the alpha swap) is extinguished or terminated, and two new swaps (the beta and gamma swaps) are created. The DCO must then report the beta and gamma swaps to an SDR under Part 45 and associate the unique swap identifier (USI) of the alpha swap with the beta and gamma swap in order for the Commission to confirm that such alpha swap was cleared.

See Statement of the Commission concerning CME Rule 1001 (March 6, 2013), page 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>.

See also Commission Regulation 45.4(a) (“[R]eporting counterparties and [DCOs] required to report swap continuation data must do so in a manner sufficient to ensure that all data in the [SDR] concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring

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The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter and in Eurex Clearing's DCO application, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact me at (202) 418-5188, or Alicia Lewis, Special Counsel, at (202) 418-5862.

Sincerely,

Ananda Radhakrishnan
Director

Attachment

during the existence of the swap."); 77 Fed. Reg. at 2153 ("[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.").

In order to avoid duplicative reporting for such transactions, Eurex Clearing should have rules that prohibit the Part 45 reporting of the beta and gamma swaps by the original counterparties to the alpha swap. These rules should make it clear to market participants that Eurex Clearing is reporting the beta and gamma swaps as if it were a registered DCO under the Part 45 rules.